

No. 05-10635

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In The  
**Supreme Court of the United States**

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Roy Den Hollander,  
*Petitioner,*

vs.

Flash Dancers Topless Club, et al.,  
*Respondents.*

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**REPLY BRIEF TO RESPONDENT FLASH DANCERS OPPOSITION TO  
PETITION FOR WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT**

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Once again the defendant-respondent Flash Dancers is attempting to avoid the legal issues by resorting to its strategy of litigation by personal destruction. Flash Dancers and the other respondents had frequently unleashed their canons of misinformation and character assassination in the lower courts, and now Flash Dancers does the same in this Court with its Opposition Memorandum (“Flash Dancers Opp.”).

Flash Dancers and its attorneys’ aim is clear: use ad hominem to shut down the argument and marginalize the plaintiff so that they do not have to argue the merits—try the person, not the issues. Character assassination and misinformation has all too often been successful for the unscrupulous by hiding their nefarious deeds under the cloak of patriotism, religion or other popular views depending on the particular time period in America’s history. Flash Dancers is attempting the same tactic by trying to stir emotions against the petitioner in order to deflect

attention from the legal issues before this Court that arose from Flash Dancers' RICO violations.

Flash Dancers' attorneys forget that the purpose behind the Bill of Rights, and of the First Amendment in particular, is to protect unpopular individuals from retaliation—and their ideas from suppression—at the hand of an intolerant society. McIntyre v. Ohio Elections Commission, 514 U.S. 334, 357, 115 S.Ct. 1511, 1524, 131 L. Ed. 2d 426 (Stevens, J.)(1995). “The proponents of the First Amendment ... were determined that every American should possess an unrestrained freedom to express his views, however odious they might be to vested interests whose power they might challenge.” Feldman v. United States, 322 U.S. 487, 501, 64 S.Ct. 1082, 1089, 88 L. Ed 1480 (Black, J. dissenting) (1944).

Respondent Flash Dancers openly operates a sexual bazaar in Times Square, New York City, which hardly puts it in a position to claim the allegations against it in this case are “subjective characterizations or conclusory descriptions,” Flash Dancers Opp., p. 4. A quick scan of Flash Dancers website, [www.flashdancersnyc.com](http://www.flashdancersnyc.com), reveals just some of the respondent's sordid activities. The site has been tamed down a great deal since this case started in the federal courts. Previously, the site sold pornography, escorts and the viewing of live sex acts over the internet in the same manner that New York Elites and Exotica 2000 did before U.S. Immigration and Customs Enforcement closed down those Russian

mafia operations for prostitution and money laundering.<sup>1</sup> Press Release U.S. Attorney Southern District of New York, SA-2.

Flash Dancers also characterizes the petitioner's allegations as "incredible," Flash Dancers Opp., p. 3, but on the *de novo* review of a Rule 12(b)(6) motion to dismiss, a defendant-appellees' protestations are not the pertinent legal standard. The standard as stated by this Court is that it "must ... take the allegations of the complaint at face value for the purpose of the motion." California Motor Transport Co. v. Trucking Unlimited, 404 U.S. 508, 515, 92 S.Ct. 609, 614, 30 L. Ed. 2d 642 (1972)(citing Walker Process Equip., Inc. v. Food Machinery & Chemical Corp., 382 U.S. 172, 174-175, 86 S.Ct. 347, 348-349, 15 L.Ed.2d 247 (1965)). The District Court in its opinion at p. 6 (A-12) stated, "[i]t is axiomatic that in deciding a motion to dismiss pursuant to Rule 12(b)(6), the Court must accept all factual allegations as true and draw all inferences in favor of plaintiff." Levy v. Southbrook International Investments, Ltd., 263 F.3d 10, 14 (2d Cir. 2001), *cert. denied* 535 U.S. 1054 (2002). Regardless of Flash Dancers opinion about the Complaint and Supplemental Complaint "[t]he issue is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support

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<sup>1</sup> Defendant-appellee Cybertech Internet Solutions, Flash Dancers' website administrator and designer, continues to advertise Flash Dancers at <http://www.stripclublist.com/c.asp?c=8534> with links to escort services that include travel packages sporting various prostitutes. Rather than continue to advertise such illegal interstate activity on its own website, Flash Dancers uses the vast internet network operated by Cybertech for selling just about everything involving sex. (Flash Dancers' other strip clubs, Private Eyes and NY Dolls, <http://www.nydollsclub.com/aboutus.asp>, are also advertised on the Cybertech network.)

the claims. Indeed it may appear on the face of the pleadings that a recovery is very remote and unlikely but that is not the test.” Scheuer v. Rhodes, 416 U.S. 232, 236, 94 S.Ct. 1683, 1686, 40 L.Ed.2d 90 (1974).

Flash Dancers further claims this case is “patently vexatious and unreasonable,” Flash Dancers Opp., p. 4, and Flash Dancers’ papers below have called this RICO action numerous names, the most favorite being “frivolous. But there has been no finding by either of the two courts below as to this case being vexatious, unreasonable or frivolous. How could there be when the allegations are against a portion of the Russian mafia’s operations in America.

The Russian mafia has been operating in the United States for years. Scott P. Boylan, Organized Crime and Corruption in Russia, Vol. 19, Fordham Int’l L.J., 1999, 2013 (1996). With the fall of the Soviet Union, the activities of Russian organized crime groups have spread to the United States and Europe. Id. “Not only does the Mafia kill and steal in Russia, it does so in the United States as well.” Id. at 2001. Mafia members are involved in "theft, extortion, money-laundering, gun-trafficking, drug running, prostitution, smuggling, loan sharking, contract killing and more." Id. “The U.S. Department of Justice has established task forces to deal with the Russian Mafia in New York, Los Angeles, and Miami.” Id. In 1994, the Russian mob had more than 300 members in the New York area alone, making it larger than the Bonanno, Colombo, or Lucchese crime families. Allan

Friedman, The Organizatsiya: Brooklyn's Booming Russian Mob is Slicker, Smarter, and Much Meaner than La Cosa Nostra, N.Y. Mag., Nov. 7, 1994, at 50. Russia's international professional criminals have caused the most economic damage in the U.S. Scott O'Neal, Russian Organized Crime, FBI Law Enforcement Bulletin, May 2000.

The issues raised in the petition for writ of certiorari go to the heart of whether Civil RICO will be effectively used in the future against the archetypal intimidating monsters of organized crime, which is what Congress intended in passing the statute. Flash Dancers hopes to convince this Court that such issues are not of "national importance" so that Flash Dancers and its compatriots in Russian organized crime can continue making lots of money in the shadows beyond the reach of the best disinfectant: the spotlight of public scrutiny.

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Flash Dancers accuses the petitioner of trying to deceive this Court by not including in his Appendix the entire Complaint and Supplemental Complaint. Flash Dancers Opp., p. 3. The Supreme Court's rules do not require the inclusion of pleadings in a petition for certiorari, but the petitioner included those sections of the pleadings that he believed essential to understanding the petition. Sup. Ct. R. 14(1)(i)(vi). The petitioner also followed the practice of the law firm he worked for just out of law school, Cravath Swaine and Moore, by not including all the

allegations. In addition, the District Court below stated many of the allegations were not necessary to its decision to dismiss, Dist. Order p. 3 ¶ 1, A-9.

Flash Dancers indicated that the abridged versions of the Complaint and Supplemental Complaint were also meant to disguise “bald assertions, periphrastic circumlocutions, unsubstantiated conclusions, or outright vituperation...subjective characterizations or conclusory descriptions....” Flash Dancers Opp., p. 4. But nowhere does Flash Dancers state which of the allegations excluded or, for that matter, included fit those descriptions. Apparently, Flash Dancers wants this Court to expend its limited time paging through the Flash Dancers’ appendix searching for allegations the respondent never cited. Flash Dancers’ attorneys chose the easy way out by making general conclusions unsupported by analysis or specifics.

Finally, the petitioner requests that Flash Dancers’ memorandum in opposition be rejected for failing to present pertinent arguments under Sup. Ct. R. 15(2) that address the issues raised in the petition for writ of certiorari.

Dated: New York, N.Y.  
June 3, 2006

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